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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:)
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Amendment of Section)
76.51 of the Commission's)
Rules to Include Goldsboro,)
North Carolina, in the)
Raleigh-Durham, North)
Carolina, Television Market)

MM Docket No. 93-212

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF CABLEVISION INDUSTRIES CORP.
IN OPPOSITION TO THE RULEMAKING TO ADD
GOLDSBORO, N.C. TO THE RALEIGH-DURHAM MARKET (#73)**

John I. Davis
Aliza F. Katz
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

August 23, 1993

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TABLE OF CONTENTS

	<u>Page</u>
I. WYED'S REQUEST FAILS TO MEET CRITERIA FOR REDESIGNATION OF A HYPHENATED TELEVISION MARKET	2
II. DENIAL OF WYED'S REQUEST FOR MARKET REDESIGNATION WOULD AVOID POTENTIALLY INCONSISTENT RESULTS WITH A PENDING COPYRIGHT OFFICE RULEMAKING PROCEEDING, AND PREVENT A FLOOD OF PETITIONS FOR MARKET HYPHENATION	8
III. CONCLUSION	12

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Cablevision Industries Corp. ("CVI"),¹ by its attorneys,
hereby submits its comments in opposition to the Commission's
Notice of Proposed Rulemaking in the above-captioned
proceeding, which proposes to amend Section 76.51 of the
Commission's Rules to add Goldsboro, N.C. to the hyphenated
Raleigh-Durham television market (#73).²

The Commission's Notice responds to a Petition for
Rulemaking filed by Group H Broadcasting Corporation,
licensee of television station WYED(TV), Channel 17,
Goldsboro, North Carolina ("WYED"), which seeks to amend

¹ CVI currently provides cable service to subscribers
in communities within the Raleigh-Durham hyphenated
television market, including the cities of Carrboro and
Hillsborough, both of which are located within Orange County,
North Carolina.

² Notice of Proposed Rule Making, MM Docket No. 93-
212, DA 93-824 (released July 15, 1993) (hereinafter
"Notice").

Section 76.51 of the Commission's Rules,³ by redesignating the Raleigh-Durham, North Carolina, television market as Raleigh-Durham-Goldsboro, North Carolina. Because WYED's proposal (1) does not satisfy the Commission's criteria for amendment of the hyphenated market list or criteria for modification of ADI markets; (2) may result in an irreconcilable conflict with a pending rulemaking proceeding before the Copyright Office; and (3) may invite a flood of other television market redesignation requests, CVI urges the Commission to reject the proposed modification of Section 76.51 and to maintain its present market designation for the Raleigh-Durham, North Carolina, television market.

I. WYED'S REQUEST FAILS TO MEET CRITERIA FOR REDESIGNATION OF A HYPHENATED TELEVISION MARKET.

As stated in its Notice, the Commission considers the following factors in evaluating requests for hyphenation of a television market:

(1) the distance between the proposed community and the existing designated communities; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change.⁴

³ 47 C.F.R. § 76.51.

⁴ Notice at ¶ 3.

The addition of Goldsboro to the Raleigh-Durham market proposed by WYED fails to satisfy each of these criteria.

First, the distance between Goldsboro and Raleigh and Durham, respectively, is too great to suggest commonality between Goldsboro and the Raleigh and Durham communities necessary for redesignation. As WYED acknowledges in its Petition, Raleigh is 51 miles from Goldsboro; Durham is approximately 74 miles from Goldsboro, although understandably WYED did not to reveal this fact in its Petition. These are vast distances that render Goldsboro a distinct and geographically separate community from either Raleigh or Durham. These distances are also greater than the distances at issue in other redesignation decisions.⁵ Moreover, the distance between Goldsboro and the headend of CVI's cable system serving Carrboro, North Carolina, is 73 miles; Hillsborough, also served by the Carrboro system, is approximately 86 miles from Goldsboro. These significant distances militate against grant of the proposed redesignation.

Second, WYED fails to demonstrate a particularized need for the proposed market redesignation. While the

⁵ See, e.g., Major Television Markets (Fresno-Visalia, California), 57 RR 2d 1122 (1985) (the markets added in redesignation of the Fresno market were 10, 30, and 35 miles from Fresno); Major Television Markets (Newark, New Jersey), 47 FCC 2d 752 (1974) (Newark adjacent to New York City).

Commission's new must-carry rules implementing provisions of the Cable Act of 1992 afford WYED the potential right to must-carry status on cable systems in the Raleigh-Durham ADI, WYED's signal is not a local signal throughout that ADI for compulsory copyright license purposes. Thus, as WYED freely admits, it seeks redesignation of the Raleigh-Durham market to include Goldsboro so that it can broaden its copyright-free status in the newly created Raleigh-Durham-Goldsboro television market. CVI submits that this reason, which is solely for the private economic advantage of WYED, does not warrant redesignation.

In its Report and Order adopting new must-carry rules, the Commission refrained from adopting comprehensive revisions to the Section 76.51 list of top 100 television markets.⁶ The Commission reasoned that "[w]holesale changes in or reranking the markets on the list would have significant implications for copyright liability."⁷ The Commission's unwillingness to make changes suggests that it did not consider relieving distant signal stations from copyright liability a particularly important objective. The fact that the Commission refused to change the market

⁶ See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, MM Docket No. 92-259, 8 FCC Rcd 2965 (1993), clarified, 8 FCC Rcd 4142, further clarified, FCC 93-354 (released July 16, 1993) (hereinafter "Report and Order").

⁷ Id. at 2978.

definitions that distinguish distant from local signals for copyright purposes supports CVI's contention that WYED's request for market identification redesignation is unwarranted, and that WYED has failed to show cause for its request.

Third, WYED also has failed to demonstrate a public interest in the proposed redesignation. While stating that it provides a "diverse voice" in the Raleigh-Durham television market,⁸ WYED does not contend that it provides any local interest programming, and CVI has found no evidence of any such programming. In fact, it appears that WYED provides no local news or sports coverage, and no other appreciable programming of local interest. Clearly the diversity WYED referred to in its Petition related to the number of reruns that comprise the bulk of its programming.⁹

Given that WYED's petition is devoid of any showing of local interest programming (which is confirmed by CVI's research), it clearly fails to serve the local needs of the Carrboro and Hillsborough communities, or any other communities in the Raleigh-Durham area. It is beyond dispute

⁸ Petition at 9.

⁹ The local television stations carried by CVI on its Carrboro and Hillsborough systems carry local news and a host of local interest programming. In contrast, WYED's programming is typified by "I Dream of Jeannie," "The Three Stooges," "Bonanza," and "USWA Wrestling." See TV Guide, Eastern North Carolina Edition at 63, 79, 107, 127, 147, 171, 193 (May 15, 1993 - May 21, 1993).

that WYED's sole basis for its market redesignation request is to obtain potential relief from compulsory copyright obligations, a wholly private financial concern, and not a public consideration. Because WYED does not serve the local needs of the cable communities served by CVI (or any other communities) it falls far short of the public interest consideration for redesignation. In fact, grant of WYED's redesignation request will disserve the interest of CVI's subscribers in Orange County. Because channel space is unavailable, redesignation of the market will force CVI to remove a channel that subscribers value and expect to receive, and replace it with WYED.

Because WYED's proposed redesignation would impact signal carriage requirements for cable systems within the Raleigh-Durham ADI, criteria used for the modification of ADI markets is also relevant to an analysis of WYED's redesignation request.¹⁰ These factors include:

¹⁰ Section 614(h)(1)(C) of the Act permits the Commission to remove communities from a station's market where justified by marketplace conditions. As the Commission has acknowledged:

The procedures recognize that ADI markets may not always accurately reflect the area in which a particular station should be entitled to cable carriage, and will help ensure that disruption to subscribers over the broadcast signals they receive is minimized.

- 1) whether the station, or similarly situated stations, have been historically carried on the cable system or systems within such community;
- 2) whether the station is located close to the community in terms of mileage or signal coverage;
- 3) whether any other station that qualifies for carriage provides coverage of news or programming of local interest; and
- 4) the local viewing patterns in both cable and noncable homes in the community.¹¹

WYED's request for redesignation fails to meet these standards as well.

First, no historical carriage of WYED can be demonstrated. CVI's cable systems serving Carrboro and Hillsborough do not carry WYED and it has never been included in the channel line-up.

Second, with respect to distance from or signal coverage of the cable communities, as discussed above, Goldsboro is 86 miles from Hillsborough and 75 miles from Carrboro. Additionally, while WYED's signal may be available to certain cable communities in Orange County, because WYED appears to provide no programming of local interest to these communities (or any others), it cannot be deemed to provide local service to these communities.

¹¹ 47 U.S.C. § 534(h)(1)(C)(ii); Report and Order at ¶ 42, 47.

Third, as discussed above, WYED provides no coverage of news or other programming of interest to the Carrboro or Hillsborough communities. Clearly, WYED fails to meet this factor as well.

Fourth, because WYED does not generate enough viewer interest in CVI's cable communities, it falls short with respect to viewing patterns. For example, WYED received a 0.1 rating in cable homes and a 0.5 rating in noncable homes according to the Nielsen Station Index Special Analysis for February 1993 for the Raleigh-Durham Designated Market Area. It appears WYED had the lowest rating of any of the stations measured.¹²

In summary, WYED fails to meet the criteria for market redesignation under § 76.51, as well as those used for the modification of ADI markets under § 76.59. Clearly WYED cannot be considered local with respect to the communities served by CVI's cable systems in Orange County.

II. DENIAL OF WYED'S REQUEST FOR MARKET REDESIGNATION WOULD AVOID POTENTIALLY INCONSISTENT RESULTS WITH A PENDING COPYRIGHT OFFICE RULEMAKING PROCEEDING, AND PREVENT A FLOOD OF PETITIONS FOR MARKET HYPHENATION.

In response to the Commission's new must-carry rules, the Copyright Office recently commenced a Notice of Inquiry

¹² See In re Petition of Time Warner Cable for Modification of ADI, Fayetteville, NC Station WYED(TV), Petition for Special Relief at 7 (filed June 2, 1993).

("NOI") seeking comment on whether it should adhere to the Commission's recent and potential future changes to Section 76.51.¹³ Specifically, the Copyright Office is considering the effect of the Commission's renamed markets on the cable compulsory license, and whether the Copyright Office should accept recent and future redesignations. As stated in its NOI, "the Office does not necessarily share the Commission's view that it has 'traditionally' followed changes in the §76.51 list, or that 'Congress intended for our [FCC] updated Section 76.51 list to be applied to assess copyright liability.'" ¹⁴

Changes to Section 76.51 would eliminate copyright indemnification as a prerequisite to must-carry eligibility for many television stations that are not currently "local" signals for copyright purposes with respect to cable systems. Eliminating the compulsory license fees for television stations whose signals are not deemed "local" for copyright purposes will significantly reduce the royalty payments

¹³ 58 Fed. Reg. 34594 (1993) (proposed June 28, 1993). Although the Commission made only slight changes to the major television market list in its Report and Order (i.e., renamed the Columbus, Ohio, market to include Chillicothe; added New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut market; and changed the Atlanta, Georgia market to Atlanta-Rome), it indicated that it would consider petitions for changes in market designation on a case by case basis. Report and Order at 2978.

¹⁴ 50 Fed. Reg. at 34596 quoting Report and Order at 2979.

program suppliers, and in turn, copyright owners have come to expect. In light of this, the Copyright Office may refuse to acknowledge the Commission's changes to Section 76.51, including the redesignation of the Raleigh-Durham television market. Thus, grant of WYED's request prior to the conclusion of the Copyright Office rulemaking, might produce the anomalous result of WYED being deemed a local signal, and thus relieved of compulsory copyright liability under the Commission's rules, but not according to the Copyright Office. Specifically, should the Commission amend Section 76.51 to include Goldsboro in the Raleigh-Durham market, affected cable systems, including CVI, would be required to add WYED immediately without copyright indemnification. Should the Copyright Office subsequently determine, however, that such changes to Section 76.51 do not alter the copyright distant status of such stations with respect to copyright royalty payment liability, cable systems throughout the Raleigh-Durham ADI for which WYED is currently a copyright distant signal will incur significant additional copyright expense solely because of the FCC's ruling.

CVI therefore urges the Commission to conserve its resources and wait for the conclusion of the Copyright Office inquiry before proceeding further with this rulemaking. Because the Copyright Office proceeding may moot WYED's request for market redesignation, failure to wait could yield

inconsistent and improvident results. Thus, the Commission should hold this proceeding in abeyance pending the outcome of the Copyright Office rulemaking.¹⁵

In addition to potentially conflicting with the Copyright Office rulemaking, redesignation of the Raleigh-Durham market will also open the proverbial floodgates. If the Commission grants WYED's petition it will expressly accept WYED's view that WYED is a local station, even though it has not demonstrated particularized need for, or public interest in, the redesignation, and notwithstanding that its city of license is distant and distinct from the existing designated communities. Initially, such a decision will invite petitions by other copyright distant stations in the Raleigh-Durham ADI seeking to escape distant signal copyright fees they must pay for coverage throughout the hyphenated market.¹⁶ A grant of WYED's Petition would establish a dangerous precedent that would invite this daisy-chain effect. As a result, the distant signal concept is at risk of becoming extinct. WYED's request, in addition to

¹⁵ At a minimum, should the Commission determine to amend § 76.51 in this and similar proceedings, it should condition such relief on the express agreement of affected stations to reimburse cable operators for any copyright liability in the event of an inconsistent Copyright Office determination in its related proceeding.

¹⁶ The Commission may take official notice of the significant number of Petitions to amend § 76.51 that have been filed since the adoption of the Report and Order.

potential copyright problems, thus threatens the concept of localism upon which the Commission's spectrum management and other broadcast and cable regulations are based. The potential of such a damaging result further supports denial of WYED's proposed amendment to Section 76.51.

III. CONCLUSION

The proposed redesignation of the Raleigh-Durham market fails to satisfy the criteria for such action, including criteria for modification of ADI markets; poses a potential conflict with a pending Copyright Office Rulemaking proceeding; and threatens to invite a rash of petitions to amend Section 76.51. Accordingly, CVI respectfully urges the Commission to reject WYED's request for redesignation of the Raleigh-Durham television market to include Goldsboro.

Respectfully submitted,
CABLEVISION INDUSTRIES CORP.

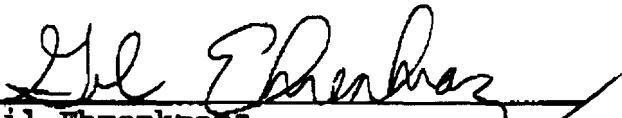
By Aliza F. Katz
John A. Davis
Aliza F. Katz
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

August 23, 1993

AFFIDAVIT

I, GIL EHRENKRANZ, Assistant General Counsel of CABLEVISION INDUSTRIES CORPORATION, do hereby declare under pain and penalty of perjury, that I have read the foregoing, "Comments of Cablevision Industries Corporation in Opposition to the Rulemaking to Add Goldsboro, N.C. to the Raleigh-Durham Market (73)," and that except for those facts of which official notice may be taken by the Commission, the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

Executed this 23rd day of August, 1993.


Gil Ehrenkranz
Assistant General Counsel
Cablevision Industries Corporation

Affirmed to and subscribed
to before me this 23rd day
of August, 1993.


Notary Public

My Commission expires: October 31, 1994

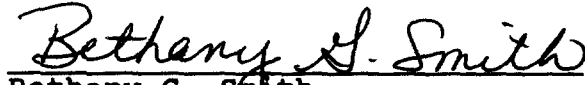
SANDRA J. CARLE
Notary Public, State of New York
No. 1450, Reg. in Sullivan County
My Commission Expires October 31, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 1993,
I caused copies of the foregoing "Comments of Cablevision
Industries, Corp. In Opposition To The Rulemaking To Add
Goldsboro, N.C. To The Raleigh-Durham Market (#73)" to be
mailed via first-class postage prepaid mail to the following:

Meredith S. Senter
Leventhal, Senter & Lerman
Suite 600
2000 K Street, N.W.
Washington, D.C. 20006-1809

George Beasley
President
Group H Broadcasting Corp.
3033 Riviera Drive
Suite 200
Naples, FL 33940


Bethany G. Smith